

# GREATER LONDON AUTHORITY

[REDACTED]  
(by email)

Our Ref: MGLA230120-1043

17 March 2020

Dear [REDACTED]

## **Bishopsgate Goodsyrd**

Thank you for your request for information which the Greater London Authority (GLA) received on 23 January 2020. Your request has been considered under Environmental Information Regulations (EIR) 2004.

You requested:

*Please would you send me all emails, notes, meeting and phone call minutes or notes, internally at the GLA, or between the GLA and the developers of Bishopsgate Goodsyrd (Bishopsgate Goodsyrd Regeneration Ltd / Ballymore / Hammerson), or between the GLA and Railtrack PLC, concerning the question as to whether land at Bishopsgate Goodsyrd is public or private land.*

*This question has been material to the progress of the planning application for Bishopsgate Goodsyrd.*

Please find attached the information the GLA holds within scope of your request. Please also find link below to our previous response including the Stage 2 report of October 2019. This notes in part that we consider the land to be public:

<https://www.london.gov.uk/about-us/governance-and-spending/sharing-our-information/freedom-information/foi-disclosure-log/eir-bishopsgate-planning-application-decision>

The GLA holds further communications within scope of your request and they fall under the exception to disclose at Regulation 12(4)(e) (Internal communications – marked redactions within attachment) and Regulation 12 (5)(b) (The course of justice and inquiries exception – client lawyer email chains not included).

Regulation 12(4)(e) applies to communications explicitly whereby GLA officials have engaged in free and frank discussions on matters pertaining to Bishopsgate Goodsyrd. The exception is engaged in order to protect the necessary space to explore ideas in private against the backdrop of a project which is under great public, media and political scrutiny.

Regulation 12 (5)(b) is very wide in coverage, in this instance it is used to cover material covered by legal professional privilege (LPP). LPP exists in this instance to protect advice from lawyer to client.

For the exception to be engaged, disclosure of the requested information must have an adverse effect on the course of justice. Disclosure of the exchange between client and lawyer would undermine the public confidence in the efficacy of LPP.

Regulation 12 (4)(e) and Regulation 12(5)(b) constitute as qualified exemptions from our duty to disclose information under the EIR, and consideration must be given as to whether the public interest favouring disclosure of the information covered by this exemption outweighs the public interest considerations favouring maintaining the exemption and withholding the information.

The GLA acknowledges that there is a public interest in transparency in relation to planning and development matters, disclosure would enable the local community to understand more fully the decision-making process.

Effective decision making should be informed by engaging with the public and key stakeholders; however, this engagement needs to be structured to be effective. Release of this information at this time would divert attention and resources away from the task at hand and towards responding to external thoughts whilst discussions are still ongoing. This in turn would also be likely to have an adverse effect on the GLA's ability to engage in free-flowing and honest exchanges of views in the future as it is likely that officials would become reluctant to explore all options.

The client / lawyer communications also took place in circumstances where a relationship of confidence was implied, and it is in the public interest to protect the principle of Legal Professional Privilege by allowing clients to have discussions with their lawyers in confidence. The best interest of the public – i.e. the public interest – is best served by ensuring that public authorities continue to debate robustly and comprehensively, considering all options and their potential impacts, for the best possible decisions to be taken.

If you have any further questions relating to this matter, please contact me, quoting the reference MGLA230120-1043.

Yours sincerely

  
**Information Governance Officer**

If you are unhappy with the way the GLA has handled your request, you may complain using the GLA's FOI complaints and internal review procedure, available at:

<https://www.london.gov.uk/about-us/governance-and-spending/sharing-our-information/freedom-information>

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 13 March 2019 17:37  
**To:** [REDACTED]  
**Subject:** RE: BGY  
**Attachments:** Draft Note Affordable Housing Threshold BGY.docx

Please see note attached (regulation 12(4)(e))

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 13 March 2019 16:21  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** RE: BGY

Yes 5pm works for me

---

**From:** [REDACTED]  
**Sent:** 13 March 2019 16:15  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** RE: BGY

Shall we go for 5pm? – I see [REDACTED] is wfh tomorrow

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyard Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY  
City Hall, The Queens Walk, London SE1 2AA  
Tel: 020 7084 [REDACTED]  
Mob: [REDACTED]  
Email: [REDACTED]@london.gov.uk  
Web: <https://www.london.gov.uk/what-we-do/planning>  
Switchboard +44 (0)20 7983 4000

---

**From:** [REDACTED]  
**Sent:** 13 March 2019 16:13  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>; [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** BGY

Could we move this back to 5pm or tomorrow?

Thanks

[REDACTED]

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 10 April 2019 10:47  
**To:** [REDACTED]  
**Subject:** RE: Meeting: Dp9/GLA re Bishopsgate Goodsynd - Mon 15 April (Jules' Brief)

[Briefing at page 34-35]

Hi [REDACTED]

I'm on leave on Monday.

I will try to review the advice at the end of the week.

Are they meeting Jules or James and Jules?

[REDACTED]

Thanks

[REDACTED]

[(regulation 12(4)(e))]

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**From:** [REDACTED]  
**Sent:** 10 April 2019 08:17  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** FW: Meeting: Dp9/GLA re Bishopsgate Goodsynd - Mon 15 April (Jules' Brief)

Hi [REDACTED]

I'm not sure if you are around next Monday but the BGY applicants are coming in to meet the Deputy Mayor. They are primarily attending to set out their latest plans to him but the issue of Public Land will no doubt crop up. I wondered whether you would be able to make it – 1100 on Monday?

I understand that the applicant's updated note with legal advice will be ready by the end of the week, leaving us little opportunity for any review ahead of the meeting.

Regards

[REDACTED]

---

**From:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Sent:** 09 April 2019 12:20  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Cc:** [REDACTED] <[REDACTED]@london.gov.uk>; Juliemma McLoughlin <[REDACTED]@london.gov.uk>  
**Subject:** FW: Meeting: Dp9/GLA re Bishopsgate Goodsynd - Mon 15 April (Jules' Brief)

Hi [REDACTED]

I know you did a brief to the DMs a couple of weeks ago – is there anything further to add? Can you please update if necessary, or resend to me and I'll sort with [REDACTED]

Thanks

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**From:** [REDACTED]  
**Sent:** 09 April 2019 11:28  
**To:** Juliemma McLoughlin <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>; [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>  
**Cc:** [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>; [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>  
**Subject:** Meeting: Dp9/GLA re Bishopsgate Goodsynd - Mon 15 April (Jules' Brief)

Juliemma/[REDACTED]

The meeting to discuss Bishopsgate Goodsynd with Dp9 is confirmed for Mon 15 April 1100-1200.

Could you please action a brief (template attached) and send to Tom and I by **this Fri 12 April**?

Many thanks

[REDACTED]

[REDACTED]

**Senior PA to Jules Pipe CBE, Deputy Mayor Planning, Regeneration & Skills, Mayor's Office**  
**MAYOR OF LONDON**

City Hall, The Queen's Walk, London SE1 2AA  
020 7983 [REDACTED]

[london.gov.uk](mailto:[REDACTED]@london.gov.uk)  
[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)

---

**From:** [REDACTED]  
**Sent:** 09 April 2019 11:22  
**To:** Jim Pool <[REDACTED][dp9.co.uk](mailto:[REDACTED]@dp9.co.uk)>  
**Cc:** Julian Shirley <[REDACTED][dp9.co.uk](mailto:[REDACTED]@dp9.co.uk)>; [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>; Juliemma McLoughlin <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>; [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>  
**Subject:** Meeting (with Jules Pipe) re Bishopsgate Goodsynd

Thanks Jim, I'll confirm and send a meeting request.

I'll wait to hear re the other attendees.

Cheers

[REDACTED]

**Senior PA to Jules Pipe CBE, Deputy Mayor Planning, Regeneration & Skills, Mayor's Office**  
**MAYOR OF LONDON**

City Hall, The Queen's Walk, London SE1 2AA  
020 7983 [REDACTED]

**london.gov.uk**

[london.gov.uk](mailto:dp9.co.uk)

---

**From:** Jim Pool <[dp9.co.uk](mailto:dp9.co.uk)>

**Sent:** 09 April 2019 11:20

**To:** <[dp9.co.uk](mailto:dp9.co.uk)>

**Cc:** Julian Shirley <[dp9.co.uk](mailto:dp9.co.uk)>; <[dp9.co.uk](mailto:dp9.co.uk)>; Juliemma McLoughlin <[dp9.co.uk](mailto:dp9.co.uk)>; <[dp9.co.uk](mailto:dp9.co.uk)>

**Subject:** Re: Meeting (with Jules Pipe) re Bishopsgate Goodsyrd

Can we take 11 o'clock on 15th please.

I am finalising the likely attendees today.

Regards

Jim

On 8 Apr 2019, at 16:02, <[dp9.co.uk](mailto:dp9.co.uk)> wrote:

Jim

I can offer one further time on Monday:

**Fri 12 April 1600-1700 City Hall**

**Mon 15 April 1100-1200 or 1400-1500 City Hall**

**Senior PA to Jules Pipe CBE, Deputy Mayor Planning, Regeneration & Skills, Mayor's Office**

**MAYOR OF LONDON**

City Hall, The Queen's Walk, London SE1 2AA  
020 7983

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[london.gov.uk](mailto:dp9.co.uk)

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**From:** <[dp9.co.uk](mailto:dp9.co.uk)>

**Sent:** 08 April 2019 15:59

**To:** Jim Pool <[dp9.co.uk](mailto:dp9.co.uk)>

**Cc:** Julian Shirley <[dp9.co.uk](mailto:dp9.co.uk)>; <[dp9.co.uk](mailto:dp9.co.uk)>; Juliemma

McLoughlin ([REDACTED] [london.gov.uk](mailto:[REDACTED]@london.gov.uk)) <[REDACTED]@london.gov.uk>; [REDACTED]  
[REDACTED] <[REDACTED]@london.gov.uk>

**Subject:** Meeting (with Jules Pipe) re Bishopsgate Goodsyrd

Jim

I can offer the following:

**Fri 12 April 1600-1700 City Hall**

**Mon 15 April 1400-1500 City Hall**

Other dates will be after the Easter break if the above don't work.

Thanks

[REDACTED]

**Senior PA to Jules Pipe CBE, Deputy Mayor Planning, Regeneration & Skills, Mayor's Office**

**MAYOR OF LONDON**

City Hall, The Queen's Walk, London SE1 2AA

020 7983 [REDACTED]

[london.gov.uk](http://london.gov.uk)

[REDACTED] [london.gov.uk](mailto:[REDACTED]@london.gov.uk)

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**From:** Jim Pool <[REDACTED]@dp9.co.uk>

**Sent:** 08 April 2019 15:54

**To:** [REDACTED] <[REDACTED]@london.gov.uk>

**Cc:** Julian Shirley <[REDACTED]@dp9.co.uk>; [REDACTED] <[REDACTED]@london.gov.uk>

**Subject:** Re: Meeting (with Jules Pipe) re Bishopsgate Goodsyrd

I agree. If you give us a couple of dates I will stress that these are the only available options.

On 8 Apr 2019, at 15:47, [REDACTED] <[REDACTED]@london.gov.uk> wrote:

Hi Jim

Happy to give a few dates but I would prefer not to have to send endless emails to secure a date.

I will revert.

Thanks

[REDACTED]

**Senior PA to Jules Pipe CBE, Deputy Mayor Planning, Regeneration & Skills, Mayor's Office**

**MAYOR OF LONDON**

City Hall, The Queen's Walk, London SE1 2AA  
020 7983 [REDACTED]

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[REDACTED] [london.gov.uk](http://london.gov.uk)

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**From:** Jim Pool <[REDACTED] [dp9.co.uk](mailto:dp9.co.uk)>

**Sent:** 08 April 2019 15:45

**To:** [REDACTED] <[REDACTED] [london.gov.uk](mailto:london.gov.uk)>

**Cc:** Julian Shirley <[REDACTED] [dp9.co.uk](mailto:dp9.co.uk)>; [REDACTED]  
<[REDACTED] [london.gov.uk](mailto:london.gov.uk)>

**Subject:** Re: Meeting (with Jules Pipe) re Bishopsgate Goodsynd

[REDACTED]

It may be easier for you to say when Jules can meet and then we do our best to accommodate those dates. Would that be ok with you?

Jim

On 8 Apr 2019, at 14:29, [REDACTED] <[REDACTED] [london.gov.uk](mailto:london.gov.uk)> wrote:

Hi Jim

Can you please advise contact details for your assistant re scheduling the meeting please?

To caveat Jules' diary is really busy before Easter so this meeting may happen after the holidays.

Best

[REDACTED]

[REDACTED]

**Senior PA to Jules Pipe CBE, Deputy Mayor Planning,  
Regeneration & Skills, Mayor's Office**

**MAYOR OF LONDON**

City Hall, The Queen's Walk, London SE1 2AA  
020 7983 [REDACTED]

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[REDACTED] [london.gov.uk](http://london.gov.uk)

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**From:** Jim Pool <[REDACTED]@dp9.co.uk>  
**Sent:** 04 April 2019 09:40  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Cc:** Julian Shirley <[REDACTED]@dp9.co.uk>  
**Subject:** Bishopsgate Goodsynd - meeting with Jules Pipe

Hi [REDACTED]

At our last meeting with Juliemma we agreed to programme in a meeting with Juliemma and Jules Pipe for the week before the Easter break. Juliemma may have already put wheels in motion for this. If not, would you mind raising it with her?

Many thanks

Jim

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 21 May 2019 16:01  
**To:** [REDACTED]  
**Subject:** RE: BGY Public Land note

Thanks [REDACTED] I would like to be there if possible – could it be moved to the following week?

Thanks

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 21 May 2019 16:00  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** RE: BGY Public Land note

Thanks [REDACTED]

Legal have scheduled a meeting with a QC on the 29<sup>th</sup> to discuss this. I note that you are away on leave that day. Is this a meeting you'd like to attend in which case I will see if we can move it? or can someone else attend in your absence?

Regards

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyrd Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY  
City Hall, The Queens Walk, London SE1 2AA  
Tel: 020 7084 [REDACTED]  
Mob: [REDACTED]  
Email: [REDACTED]@london.gov.uk  
Web: <https://www.london.gov.uk/what-we-do/planning>  
Switchboard +44 (0)20 7983 4000

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**From:** [REDACTED]  
**Sent:** 21 May 2019 12:31  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** RE: BGY Public Land note

Hi [REDACTED]

Thanks for this. I will do my best to review on Friday.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 21 May 2019 11:41  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** FW: BGY Public Land note

Hi [REDACTED]

Attached is the applicant's legal opinion and Network Rail letter plus the original DP9 note.

I note that you are busy but could you take a look at this before the end of the week? We are intending to seek our own advice on this and may be discussing it with a QC on 29<sup>th</sup> May.

Let me know if you have any queries.

Regards

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyrd Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY  
City Hall, The Queens Walk, London SE1 2AA  
Tel: 020 7084 [REDACTED]  
Mob: [REDACTED]  
Email: [REDACTED] [london.gov.uk](mailto:[REDACTED]@london.gov.uk)  
Web: <https://www.london.gov.uk/what-we-do/planning>  
Switchboard +44 (0)20 7983 4000

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**From:** [REDACTED]  
**Sent:** 21 May 2019 11:38  
**To:** [REDACTED] <[REDACTED]@tfl.gov.uk>  
**Cc:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** FW: BGY Public Land note

Hi [REDACTED]

Please find attached the applicant's legal opinion on the public land status or otherwise of the Bishopsgate Goods Yard site, together with the earlier note prepared by DP9 plus a letter from Network Rail. We can discuss this tomorrow.

Regards

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyrd Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY  
City Hall, The Queens Walk, London SE1 2AA  
Tel: 020 7084 [REDACTED]  
Mob: [REDACTED]  
Email: [REDACTED] [london.gov.uk](mailto:[REDACTED]@london.gov.uk)  
Web: <https://www.london.gov.uk/what-we-do/planning>  
Switchboard +44 (0)20 7983 4000

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**From:** Julian Shirley <[REDACTED]@dp9.co.uk>  
**Sent:** 21 May 2019 11:13  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Cc:** [REDACTED] <[REDACTED]@hammerson.com>; [REDACTED]  
<[REDACTED]@ballymoregroup.com>  
**Subject:** RE: BGY Public Land note

[REDACTED]  
Please see attached our QC legal opinion on the public land point and an accompanying letter from Network Rail.

If you have any queries, please let me know.

Thanks  
Regards

**Julian Shirley**

Director

direct: [REDACTED]  
mobile: [REDACTED]  
e-mail: [REDACTED] [dp9.co.uk](mailto:[REDACTED]@dp9.co.uk)

**DP9 Ltd**

100 Pall Mall

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telephone: 020 7004 1700 facsimile: 020 7004 1790 website: [www.dp9.co.uk](http://www.dp9.co.uk)

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**From:** [REDACTED] [[mailto:\[REDACTED\]@london.gov.uk](mailto:[REDACTED]@london.gov.uk)]

**Sent:** 16 May 2019 09:24

**To:** Julian Shirley <[REDACTED]@dp9.co.uk>

**Subject:** RE: BGY Public Land note

Hi Julian

Thanks. Any chance it could be with us by Tuesday at the latest. We've set up our own legal advice and they've provided this as a deadline for discussion on this matter before the end of the month.

Regards

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyrd Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY

City Hall, The Queens Walk, London SE1 2AA

Tel: 020 7084 [REDACTED]

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Web: <https://www.london.gov.uk/what-we-do/planning>

Switchboard +44 (0)20 7983 4000

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**From:** Julian Shirley <[REDACTED]@dp9.co.uk>

**Sent:** 15 May 2019 16:01

**To:** [REDACTED] <[REDACTED]@london.gov.uk>

**Subject:** RE: BGY Public Land note

Hi [REDACTED]

Our QC is been tied up in an Inquiry until the end of the week. It should be issued early next week.

Regards

**Julian Shirley**

Director

direct: [REDACTED]  
mobile: [REDACTED]  
e-mail: [REDACTED] [dp9.co.uk](mailto:[REDACTED]@dp9.co.uk)

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**From:** [REDACTED] [[mailto:\[REDACTED\]@london.gov.uk](mailto:[REDACTED]@london.gov.uk)]

**Sent:** 15 May 2019 10:56

**To:** Julian Shirley <[\[REDACTED\]@dp9.co.uk](mailto:[REDACTED]@dp9.co.uk)>

**Subject:** BGY Public Land note

Hi Julian

Can you give me an update on where we are at with the Public Land note?

Regards

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyrd Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY  
City Hall, The Queens Walk, London SE1 2AA  
Tel: 020 7084 [REDACTED]  
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Switchboard +44 (0)20 7983 4000

#LondonIsOpen



Bishopsgate Goodsyard Regeneration Limited  
Kings Place  
90 York Way  
London N1 9GE

For the attention of [REDACTED] and [REDACTED]

9<sup>th</sup> April 2019

Dear Sirs

**Bishopsgate Goodsyard – land ownership position**

We refer to the note entitled "The Goodsyard – Affordable Housing Fast Track Approach" prepared by DP9 Limited (the "DP9 Note"), a copy of which has been provided to us by Bishopsgate Goodsyard Regeneration Limited (the "JV").

Paragraph 4 of the DP9 Note sets out a chronology describing the land ownership position at Bishopsgate Goodsyard from 2 November 1994 to date. The DP9 Note summarises the key facets of each of the transactions listed in the chronology.

We confirm that the summary set out in paragraph 4 of the DP9 Note is accurate, comprehensive and describes fully the land ownership position at the Goodsyard. In particular, paragraph 4.2 summarises accurately both the right of the JV to "draw down" the remainder of the Goodsyard site and the right of Network Rail to require the JV to do so.

Please do let us know if we may be of further assistance.

Yours faithfully

[REDACTED]

Stuart Kirkwood

Development Director

Network Rail Infrastructure Limited

## THE GOODSYARD

### Affordable Housing Fast Track Approach

#### Introduction

1. I am asked to advise on the appropriate approach to adopt to the issue of affordable housing at the Bishopsgate Goodsyrd. In particular I am asked to advise as to whether the Goodsyrd should be treated as public land for the purposes of affordable housing policy. My conclusion which is set out at the end of this opinion is that the Goodsyrd should **not** be treated as public land for these purposes.
2. The Mayor's Affordable Housing and Viability SPG ("the SPG") published by the GLA in August 2017 provides guidance on the provision of affordable housing on land in London including public land. Similar provisions appear in the version of the draft new London Plan which is presently in the course of an Examination in Public ("EiP").
3. The Mayor has also issued a non-statutory document entitled 'Threshold Approach to Affordable Housing on Public Land' ("the Guidance Note") in July 2018 which purports to provide further guidance on the implementation of the affordable housing threshold for public land. That document was not the subject of full public consultation. Neither was its consistency with the development plan considered by an independent body (such as an EiP).

#### The Mayor's Approach to Affordable Housing

4. The SPG (and draft new London Plan) sets out the Mayor's preferred approach to implementing London Plan policies on affordable housing. The Mayor has adopted a "threshold approach" to viability, where the viability information expected to be produced by an applicant differs depending on the level of affordable housing being provided:
  - *Fast Track Route*: applications that meet or exceed 35% affordable housing provision without public subsidy, provide affordable housing on-site, meet the Mayor's specified tenure mix and meet other planning requirements and obligations to the satisfaction of the local planning authority and the Mayor where relevant, are not required to provide viability information.
  - *Viability Tested Route*: schemes which do not meet the 35% affordable housing threshold, or require public subsidy to do so, or which are otherwise not suitable for the Fast Track Route, will be required to submit detailed viability information.
5. The Fast Track Route therefore applies inter alia to applications that meet or exceed a 35% affordable housing provision without public subsidy. The exception is where land is in public ownership. The Mayor's policy states that this land should make a more significant contribution to affordable housing, and in particular that residential proposals on land in public ownership should deliver at least 50% affordable housing to benefit from the Fast Track Route. The practical consequence of the 35% Fast Track Route is that the Mayor will not ordinarily in practice seek more than 35% affordable housing on Fast Track sites. This

has an inevitable impact on the way in which a site is valued for residual land valuation purposes.

6. The SPG (paragraph 2.36) and the London Plan define public land for the purposes of the approach as:

*“Land that is owned or in use by a public sector organisation, or company or organisation in public ownership **or land that has been released from public ownership and on which housing development is proposed.**”* (my emphasis).

7. Paragraph 10 of the Guidance Note advises that the intention of this definition is to ensure that the higher threshold cannot be avoided through the transfer of land to a separate company or organisation or through disposal of the land, which would undermine the objectives of the higher threshold for public land.
8. It is notable that the Guidance Note uses the concept ‘disposes of’ in this context. And, that what the Guidance is really concerned with is the issue of the nature of control maintained by the public entity before or after the disposal. Thus, if the public entity can as a matter of fact control the quantum of affordable housing (say for example by way of lowering the purchase price to reflect the requirement of the plan in full), then it should exert that ‘control’. Paragraphs 13 and 14 emphasise the importance of the concept of the control of the land to the operation of the higher threshold:

***“13. In this instance [example of a long-lease] control of the land is primarily in private hands (although the freeholder’s consent may be needed in some instances including redevelopment).***

***14. For these reasons where the public sector land interest is in the form of a freehold or similar interest and a long leasehold is in place which is not held by the public land owner, the 35 per cent threshold would apply in relation to the Fast Track Route.”***

9. The paragraph also notes that the widened definition of public land (emboldened above) is not meant to capture every single piece of land that has ever been released from public ownership at any time. Rather, it provides that:

*‘where sites were disposed of and either have been redeveloped or were subject to a change of use prior to the publication of the Mayor’s Affordable Housing and Viability SPG, the 35 per cent affordable housing threshold should apply.’*

10. The rationale behind the “exemption” for sites which transacted prior to the Mayor’s publication of the SPG is very clear.

11. It is this.

- a. Public bodies are under a variety of duties to ensure that when they dispose of land they do so in a manner which does not prejudice the public purse.
- b. When a public body disposes of land it will have regard to its development potential as part of the transaction price.

- c. By the same token a potential purchaser/developer of the land will have regard to the relevant policy.
  - d. Both parties will therefore undertake a residual land value appraisal of the land to identify the appropriate transaction price.
  - e. If a transaction took place prior to the relevant SPG which introduced the 50% affordable housing fast track requirement to public land, then the relevant public authority and purchaser/developer would have had regard to the policy regime in place at the time of the transaction in setting the transaction price.
  - f. In such circumstances the guidance recognises that it would be both inappropriate and unfair for the purchaser/developer to be treated ‘as if’ somehow it were a public body and to be required to be bound by a viability regime which was not in place at the time of the land’s historic transaction.
  - g. Further, in such circumstances, neither can it have been the intention of the relevant transacting public body to use the said transaction to circumvent the 50% policy.
12. The Mayor has recognised the force of this argument previously in relation to land value transactions which predated an affordable housing policy shift. In such circumstances he has identified that the residual land valuation market would need time to adapt to such changes before the full rigours of new SPD requirements were enforced. Thus, as an example, when the preference for an EUV plus approach over a market value approach to benchmark land values was first introduced, the Mayor was very clear that the implications for the market meant that it was only appropriate to enforce the new position in relation to transactions which post-dated the guidance and where as a result there had been an opportunity to reflect in the market the new approach to valuation.
13. Thus, consistent with that approach, the Mayor has recognised here too that the new SPG will inevitably have an impact on residual land valuation... indeed that is its purpose... but also that it would be inappropriate, unfair and counterproductive to visit those implications upon developers whose transactions with public bodies pre-dated the SPG and reflected the pre-existing regime.
14. For these reasons, providing an exemption to the ‘public land provisions’ of the SPG for transactions which predate the SPG is rational, consistent with previous practice and wholly reasonable.
15. The exemption also recognises (as noted) that such transactions could not have intended to circumvent the consequences of the 50% threshold for ‘public’ land - the entire purpose of the extended definition of public land beyond its ordinary and understood meaning.
16. It is to be noticed however that the ‘exemption’ is only said to exist or to be capable of being relied upon where the relevant transaction has also at the time of the relevant valuation or consideration, led to operational development or material change of use of the land. (Para 10 GN see above).
17. No explanation has been given for this additional requirement. It has been ‘tagged on’ to the transaction date provision. On examination there is no logical explanation for it.
18. The argument for the exemption in principle set out above is clear and transparent. Indeed without the exemption the extended definition of “public land” as including any land that

had ever been in public ownership or control would be very unlikely to be given any weight by a rational decision maker, looking at the purposes of that wider definition.

19. The 'exemption' operates because, (as explained above) for such transactions, the market would not have been able to adjust to the provisions of the new SPG and because for these transactions, the potential for public authorities to sidestep the SPG by transferring land at an overvalue not representative of SPG policy or to avoid the 50% provision simply does not exist.
20. Of course these arguments apply in full whether or not the relevant transaction has actually led to any form of development on the site.
21. Indeed the issue of whether any development (or its nature and extent) has actually taken place on the land since the transaction is entirely irrelevant to the issue of whether it should be treated as 'public land' or not. It is wholly unrelated to the stated reason for the extended definition and to this extent limiting the extent of the exemption to such circumstances is irrational and indefensible.
22. In such circumstances it is my opinion that a decision maker would and should give little weight to the second limb of the exemption requirement. It robs the exemption of meaningful application where the exemption should clearly apply in order to limit the inappropriate impacts of the wider definition of 'public land'.
23. This element of the exemption has not been the subject of appropriate thought, consultation or independent assessment.

## **Summary**

24. Thus, the policy that public land should be the subject of a 50% provision of affordable housing to secure a fast track determination is contained in the SPG. Public land is not given its ordinary meaning but it is given an extended meaning. That meaning in practice, includes land that was also previously in public control. But it does not include circumstances where public land is not or was not in reality in the meaningful control of the public sector such as where land is only owned in a freehold manner but subject to substantial private control by long lease or similar. There is also an appropriate exemption where the disposal of control takes place on a date before the SPG. The aim of the extended definition is to avoid public authorities circumventing the public land provision in the SPG by selling land which they control to the private sector: the policy must be applied with this purpose in mind.

## **Application of the rational policy basis in the circumstances of this case**

25. The issue arises in the present case as to whether the extended definition of public land should apply to the Goodsynd and if it does whether the relevant exemption properly understood is applicable.
26. In my opinion when examined accurately, BGY should not be caught by the extended definition of public land. As a matter of fact, it was purchased from a private company. As

a matter of substance, the successor of title to that private company, though now public in character, has had and can have no meaningful control of the land in relation to affordable housing matters or at all. I explain why below.

## **The transaction**

27. The history of the land transactions in this case is complex. I have seen a note identifying the various stages of it produced in March 2019 by DP9 and Herbert Smith Freehills. The factual position set out in that note is corroborated by a letter dated 9 April 2019 from Network Rail Infrastructure Limited (NRIL). Both the note and the letter have been provided to the GLA.
28. The land use planning consideration of the case ought to be confined to the impact of these transactions upon the aims and objectives of policy and in particular of affordable housing policy. And to that extent, the effect of the overall impact of the legal documentation is clear.
29. It is that Bishopsgate Goodsyard Regeneration Ltd (BGRL) as a matter of fact and substance acquired its interest in the land in 2002 from a private landowner, namely Railtrack.
30. From that date because of the nature of the contract which on its face allows BGRL unconditionally to call down freehold and long leasehold land (and Railtrack to require BGRL to take up such land too), neither Railtrack nor its eventual successor in title NRIL, had any realistic or relevant ability to influence levels of affordable housing at the site. Truly '[c]ontrol of the land was essentially [for affordable housing purposes] in the private hands' (Guidance Note para 13)
31. This truth is reflected in the 2006 and 2011 variations of the agreement (both of which in any event clearly pre-date the relevant SPG.)
32. Neither in the circumstances of this case is, nor can there be any suggestion of, or the potential for NRIL to circumvent the provisions of the SPG now by transferring land out of its ownership at an overvalue to reflect the lower 'starting point' provision of affordable housing on its land. That is because the nature of the transaction already long concluded means that it is simply now practically impossible for it to act in such a circumventary fashion. It (like the GLA in Newham-see below) simply has insufficient control to effect such a circumvention.
33. The requirement for decision makers to look to the substance of these matters in land use planning terms is illustrated by the way in which the GLA, no doubt on legal advice, dealt with its own freehold ownership of a development site in LB Newham.
34. The wider definition of 'public land' was scrutinised in the proposed redevelopment of the Western Gateway Sites 2 & 3 in LB Newham. The GLA Stage 1 report (ref. GLA/4318/01 dated 16 July 2018<sup>th</sup>) noted that the Greater London Authority (GLA) remained the freehold owner of the site. However, the site was also subject to a lease to the London International Exhibition Centre (LIEC), a private entity. It ran for a period of 200 years from 9 April 1999 and therefore had 181 years remaining. In addition, an underlease was in place which

transfers leasehold status to the private Joint Venture Partnership set up between Mount Anvil and the LIEC, which applies until 30 March 2199.

35. The GLA Stage 1 report considered that the length of the leases and the private sector entities effectively meant that the GLA retained in truth and substance very little commercial influence over the potential development of the site which is, in effect, currently more akin to private land. 'Control of the land was essentially in private hands' for the purposes of the Guidance Note. Accordingly, having considered the landownership characteristics in the Newham case, GLA officers concluded that, for the purposes of the 'Fast Track Route' set out in the SPG and the draft London Plan, the site should not be treated as public but that a 35% affordable housing threshold should be applied.
36. Such an approach explains clearly the underlying rationale, the aim and objective of the Guidance Note. The GLA in the Newham case was the legal owner but had limited control over the ability of the land to bring forward affordable housing in the real world because of the historic nature of the transactions which had been undertaken and the provisions of the long lease. The note makes it clear that it is not just such freehold ownerships which lack the requisite control. 'Similar' situations might also exist.
37. In the present case, looking at the reality of the matter, the position of NRIL is in essence the same. It has no control over the matters relevant to affordable housing because of the 2002 transaction with its predecessor of title. Neither can it be said in the circumstances of this case in any way to be selling to a private entity in order to circumvent the provisions of the SPG.
38. In addition, as explained above, the origins of this extent of control is BGRL's right to acquire which ultimately flows from a transaction with a private sector body (Railtrack plc) and BGRL, not Network Rail, has ultimate control over the land.
39. Further, all relevant parts of the binding and unconditional land transaction (whether with a private or a public entity) in the circumstances of this case were completed well before the introduction of the SPG thus engaging the exception to the wider definition even were it, contrary to this opinion, properly invoked. As a matter of fact there have also been smaller scale changes of use and operational development at the site (including Boxpark and the provision of the Overground box) but, as I indicate above, I do not think that these matters are truly relevant to the issues of whether the Goodsyards should be treated as public land for the purposes of the SPG and emerging London plan.

## **Conclusion**

40. As a result of these matters, the Goodsyards should not be considered public land in the wider sense identified by the non-statutory guidance note. The relevant public body has in reality no control of the site in terms of affordable housing provision. In short BGRL can call down the land for development without reference to or any control from the freeholder. That control was passed as a matter of fact and law to the BGRL predecessor in title in 2002 by a private organisation, not a public body. Further, the relevant transaction was entered into 15 years before the publication of the SPG. There is therefore, and can be, no attempt at circumventing the provisions of the SPG by any public body.

Russell Harris QC  
Landmark Chambers  
20 May 2019

# **THE GOODS YARD**

## **Affordable Housing Fast Track Approach**

### **1.0 Introduction**

- 1.1 This note has been prepared by Dp9 Limited, with input from Herbert Smith Freehills in relation to the land ownership position, to confirm the approach by Bishopsgate Goods Yard Regeneration Limited (“BGYRL”) with regard to the Mayor’s ‘Fast Track Route’ for the provision of affordable housing as part of the proposed redevelopment of the Goods Yard (“the site”).
- 1.2 The Mayor’s Affordable Housing and Viability SPG (“the SPG”) published by the GLA in August 2017 provides guidance on the provision of affordable housing on public land.
- 1.3 This note confirms the ownership status of the site so the appropriate policy can be applied
- 1.4 This note makes reference to the ‘Threshold Approach to Affordable Housing on Public Land’ (“the Guidance Note”) issued by the GLA in July 2018 which provides further details on the implementation on the affordable housing threshold for public land.

### **2.0 Executive Summary**

- 2.1 This note confirms that the proposed approach by BGYRL accords with the Mayor’s SPG and Guidance Note in relation to the 35% affordable housing threshold for the redevelopment of the Goods Yard. The history of the land ownership position demonstrates that the site is in the control of private hands and the land interests were acquired from a private sector body.
- 2.2 In 2002, BGYRL assumed rights relating to the draw down of land interests over the site from Railtrack, a private company. Subsequent changes in the status of the entity disposing of the land interests are not relevant, because the contractual relationship between the parties had already been crystallised before those changes took place.
- 2.3 For the purposes of the Guidance Note, at the relevant time, which is when BGYRL acquired the land interests in the site, the site was in private ownership. As such, the site was not released from public ownership for the purposes of housing development.
- 2.4 BGYRL retains control over the potential redevelopment of the site and has the ability and obligation to draw down the land.
- 2.5 For the reasons set out, the site cannot be considered as public land for the purposes of the affordable housing threshold set out in the Mayor’s SPG and accompanying Guidance Note. Therefore, the affordable housing threshold of 35% for the ‘Fast Track Route’ would apply to the future redevelopment of the site.

### **3.0 The Mayor’s Approach to Affordable Housing**

- 3.1 The SPG sets out the Mayor's preferred approach to implementing London Plan policies on affordable housing. In particular, the Mayor has adopted a "threshold approach" to viability, where the viability information expected to be produced by an applicant differs depending on the level of affordable housing being provided:
- *Fast Track Route*: applications that meet or exceed 35% affordable housing provision without public subsidy, provide affordable housing on-site, meet the Mayor's specified tenure mix and meet other planning requirements and obligations to the satisfaction of the local planning authority and the Mayor where relevant, are not required to provide viability information.
  - *Viability Tested Route*: schemes which do not meet the 35% affordable housing threshold, or require public subsidy to do so, or which are otherwise not suitable for the Fast Track Route, will be required to submit detailed viability information.
- 3.2 As such, the Fast Track Route applies to applications that meet or exceed a 35% affordable housing provision without public subsidy (amongst other requirements). The exception is where land is in public ownership. The Mayor's policy states that this land should make a more significant contribution to affordable housing, and in particular that residential proposals on land in public ownership should deliver at least 50% affordable housing to benefit from the Fast Track Route.
- 3.3 The SPG (paragraph 2.36) and the London Plan defines public land for the purposes of the approach as:
- "Land that is owned or in use by a public sector organisation, or company or organisation in public ownership or land that has been released from public ownership and on which housing development is proposed."*
- 3.4 Paragraph 10 of the Guidance Note advises that the intention of this definition is to ensure that the higher threshold cannot be avoided through the transfer of land to a separate company or organisation or through disposal of the land, which would undermine the objectives of the higher threshold for public land. The Guidance Note goes on to state that, *"However where sites were disposed of and either have been redeveloped or were subject to a change of use prior to publication of the Mayor's Affordable Housing and Viability SPG, the 35 per cent affordable housing threshold should apply."*
- 3.5 Paragraphs 13-15 of the Guidance Note set out the distinction between different types of interest in the land. Paragraph 13 advises that on some sites *"the freehold land interest may be in public ownership, whereas a private landowner may hold a long leasehold interest. In this instance control of the land is primarily in private hands (although the freeholder's consent may be needed in some instances including redevelopment)."*
- 3.6 Paragraph 14 advises that,

*“For these reasons where the public sector land interest is in the form of a freehold or similar interest and a long leasehold is in place which is not held by the public land owner, the 35 per cent threshold would apply in relation to the Fast Track Route.”*

3.7 Paragraph 15 states,

*“However where a long leasehold has been disposed of by a public sector land owner for the purposes of development, the 50 per cent threshold will continue to apply. This is to avoid the leasehold being disposed in order for the site to be considered under the lower threshold.”*

#### **4.0 Land Acquisition Timeline**

4.1 BGYRL acquired its interest in the land from Railtrack, a private sector body, in 2002. As such, at that time, the site was not released from public ownership and has remained in private hands.

4.2 BGYRL’s Property Lawyers have confirmed the following timeline for the land acquisition of The Goods Yard:

- **2 November 1994**: Agreement entered into between Railtrack Plc ("Railtrack") and London Underground Limited ("LUL"). Under this Agreement, Railtrack and LUL agreed the basis on which LUL would acquire its land interests in the site (which includes land at BGY) to enable it to construct and operate the East London Line.
- **10 July 2001**: The original Conditional Agreement for the sale of freehold and leasehold land at BGY was entered into between Railtrack and Railtrack (Spacia) Limited ("**RSL**"). Under this Agreement, RSL had the right to buy freehold and leasehold interests at BGY and to acquire airspace over the East London Line within BGY which Railtrack was able to acquire from LUL under the 1994 Agreement.
- **7 October 2001**: Railtrack goes into railway administration by virtue of court order (but remains a private entity).
- **19 August 2002**: The 2001 Conditional Agreement was assigned to Bishopsgate Goodsyrd Limited (now Bishopsgate Goodsyrd Regeneration Limited ("**BGYRL**")) pursuant to a deed of assignment between RSL, BGYRL and Railtrack. RSL assigned all of its rights in the 2001 Conditional Agreement to BGYRL and BGYRL assumed all of RSL's obligations owed to Railtrack. RSL was released from all obligations and BGYRL was deemed to be the purchaser under the 2001 Conditional Agreement from this point onwards. This is therefore the key date at which BGYRL’s position on the land was created. At this point, Railtrack remained a private entity.
- **3 February 2003**: Railtrack Plc changed its name to Network Rail Infrastructure Limited and re-registered from a public limited company

(Plc) to a private limited company. Notwithstanding its corporate designation, NRIL is a government-owned, arms' length public sector company of the Department of Transport that operates as a regulated monopoly and whose sole member is the Secretary of State for Transport. It is only at this point, after BGYRL's interest in the land has been created, that the freehold interest can be said to be in "public ownership".

- **6 December 2006**: First Variation Agreement of the 2001 Conditional Agreement entered into between NRIL (1) BGYRL (2) and Ballymore Properties Limited and Hammerson UK Properties Plc (3).
- **15 December 2011**: Second Variation Agreement of the 2001 Conditional Agreement entered into between NRIL and BGYRL. The site consists of four "Buildable Phases", the first of which was drawn down by BGYRL as part of entry into the 2011 Variation Agreement (and in relation to which BGYRL is registered as the freehold owner at the Land Registry). BGYRL still has the right to draw down the other Buildable Phases and NRIL has a put option whereby it can require BGYRL to take a transfer of each of the other Buildable Phases.

4.3 The 2006 and 2011 variations mentioned above do not vary the 2001 Conditional Agreement in such a way as to change the fact that, at the point that BGYRL contracted to acquire land interests at BGY in 2002, this contract was with Railtrack, as a private company at that time.

4.4 In summary, BGYRL acquired land interests in the site in 2002 from Railtrack, a private sector entity. As such, BGYRL's land interests give control of the site.

## **5.0 The Case for Private Ownership: The Mayor's SPG and Guidance Note**

5.1 As set out above, the key date in this timeline is 19<sup>th</sup> August 2002, when BGYRL assumed the rights and obligations from RSL relating to the draw down of land interests in the site from Railtrack, a private company.

5.3 It can therefore be demonstrated that *at the relevant time*, the land was in private ownership and was **not**, therefore, "*released from public ownership*" for the purpose of housing development (see para 2.36 of the SPG).

5.4 The relevant time is the date on which BGYRL contracted to acquire land interests at the site and so "*control of the land is primarily in private hands*" (para 13 of the Guidance Note). The timeline above shows that this contract (at the time of BGYRL's assignment of the right to draw down the land) was entered into with Railtrack Plc, which was a private company at that time. Subsequent changes in the status of the entity disposing of the land interests are not relevant, because the contractual relationship between the parties had already been crystallised before those changes took place.

5.5 Further, paragraph 10 of the SPG, notes that where sites were disposed of and either have been redeveloped or subject to a change of use prior to the publication of the SPG,

the 35% affordable housing threshold should apply. BGYRL clearly acquired rights to the site prior to the publication of the SPG in 2017 and the site has been developed and subject to a change of use prior to the SPG being published.

## **6.0 Precedents**

- 6.1 The definition of public land was scrutinised in the proposed redevelopment of the Western Gateway Sites 2 & 3 in LB Newham. The GLA Stage 1 report (ref. GLA/4318/01 dated 16 July 2018<sup>th</sup>) noted that the Greater London Authority (GLA) is the freeholder for the site. However, the site is subject to a long-lease to the London International Exhibition Centre (LIEC), a private entity, which runs for a period of 200 years from 9 April 1999 and therefore had 181 years remaining. In addition, an underlease is in place which transfers leasehold status to the private Joint Venture Partnership set up between Mount Anvil and the LIEC, which applies until 30 March 2199.
- 6.2 The GLA Stage 1 report considered that the length of the leases and the private sector entities effectively meant that the GLA has very little commercial influence over the potential development of the site which is, in effect, currently more akin to private land at the current time. Accordingly, having considered the landownership characteristics in this case, GLA officers concluded that, for the purposes of the 'Fast Track Route' set out in the SPG and the draft London Plan, the site should be subject to a 35% affordable housing threshold.
- 6.3 The similarity in this case to The Goods Yard is that firstly, BGYRL acquired rights over / to acquire The Goods Yard well before the publication of the Mayor's SPG. Secondly, although BGRL does not have a long leasehold, its interest in the site is of a broadly similar effect – meaning that like in the Western Gateway case, the public sector body has very little commercial influence. BGYRL has already drawn down a first phase of land in 2011 and has the ability and obligation to draw down further phases at will and Network Rail has a put option to require BGRL to take a transfer of these phases. The origins of this is BGRL's right to acquire flows from a contract with a private sector body (Railtrack plc) and BGYRL, not Network Rail, has ultimate control over the land.
- 6.4 As such, similar to the Western Gateway site noted above, in respect of The Goods Yard, the public body effectively has no control over the site. This position reflects paragraph 13 of the Guidance Note where control of the land is primarily in private hands. Furthermore, it should also be noted that BGYRL do not need to obtain the freeholder's consent.

## **7.0 Conclusions**

- 7.1 From a review of BGYRL's land acquisition timeline and their extent of control over the site, it is evident that:
- The site is controlled by BGYRL, a private entity;

- BGYRL entered into development rights for the site with Railtrack Plc in 2002, which was a private company at the time;
- The site was in private ownership and was not, “*released from public ownership*” for the purpose of housing development;
- BGYRL acquired rights to the site significantly in advance of the publication of the Mayor’s SPG;
- The site has been redeveloped and has been the subject to a change of use, prior to the publication of the Mayor’s SPG;
- BGYRL control the draw down of land for the purposes of the redevelopment of the site and do not need to seek the freeholder’s consent to do so.

7.2 For the above reasons, the site does **not** meet the definition of public land as set out in the Mayor’s SPG and the associated Guidance Note. As such, there is a clear justification that the 35% affordable housing threshold for the ‘Fast Track Route’ would apply and is fully in accordance with the Mayor’s SPG and the London Plan.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 24 May 2019 09:32  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: availability of Douglas Edwards QC

[REDACTED] I can do between 12 and 3 on 5th (I have meetings either side so would need to allow travel time if meeting at chambers) and all day on 7th  
Thanks  
[REDACTED]

On 23 May 2019, at 09:14, [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)> wrote:

I can do the 5<sup>th</sup> and the 7<sup>th</sup> all day

---

**From:** [REDACTED]  
**Sent:** 23 May 2019 08:34  
**To:** [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>; [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>  
**Subject:** Fwd: availability of Douglas Edwards QC

Hi [REDACTED] and [REDACTED]

Re the bishopsgate public land matter can you make any of the dates below for a legal meeting. I'm good all three from 10 except Friday pm.

Regards [REDACTED]

Sent from my iPhone

Begin forwarded message:

**From:** [REDACTED] <[REDACTED][tfl.gov.uk](mailto:[REDACTED]@tfl.gov.uk)>  
**Date:** 22 May 2019 at 17:07:25 BST  
**To:** [REDACTED] <[REDACTED][london.gov.uk](mailto:[REDACTED]@london.gov.uk)>  
**Subject:** availability of Douglas Edwards QC

Dear [REDACTED]

Following our meeting I have contacted chambers and instead of 29 May they offered the following:

5 June – all day

6 June – morning only

7 June – all day

Would you be able to check your and [REDACTED] diaries please and let me know which times would work best?

Many thanks.

[REDACTED] | Principal Lawyer - Property & Planning | Legal  
**Transport for London** | 3rd Floor, Petty France | 55 Broadway, London | SW1H 0BD  
[REDACTED] [tfl.gov.uk](mailto:[REDACTED]@tfl.gov.uk) | Tel: [REDACTED]

Legal 500 2018 in-house transport team of the year

[REDACTED]

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**From:** Julian Shirley <[REDACTED]@dp9.co.uk>  
**Sent:** 20 June 2019 13:47  
**To:** [REDACTED]  
**Subject:** Re:

Hi [REDACTED]  
3:15pm next Wednesday is fine for us.  
Attendees will be:  
Julian Shirley & Jim Pool  
Tony Coughlan  
Nicola Zech-Bergen's  
Peter Cole  
[REDACTED] Mulryan.

Regards

Julian Shirley  
Director

[REDACTED]  
e-mail: [REDACTED]@dp9.co.uk

Dp9 Limited  
[100 Pall Mall](#)  
[London](#)  
[SW1Y 5NQ](#)

telephone: [020 7004 1700](tel:02070041700) facsimile: [020 7004 1790](tel:02070041790) website: [www.dp9.co.uk](http://www.dp9.co.uk)

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On 20 Jun 2019, at 11:07, [REDACTED] <[REDACTED]@london.gov.uk> wrote:

Hi Julian  
Once confirmed, can you let me know who will be attending next Wednesday please.  
Regards

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyrd Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY  
City Hall, The Queens Walk, London SE1 2AA  
Tel: 020 7084 [REDACTED]  
Mob: [REDACTED]  
Email: [REDACTED]@london.gov.uk  
Web: <https://www.london.gov.uk/what-we-do/planning>  
Switchboard +44 (0)20 7983 4000

#LondonIsOpen

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 01 July 2019 15:43  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: land registry searches please  
**Attachments:** Official Copy (Register) - AGL248047.pdf; Official Copy (Register) - EGL512363.pdf; Official Copy (Register) - EGL527333.pdf; Official Copy (Register) - LN104921.pdf

---

**From:** [REDACTED] (Legal Support)  
**Sent:** 01 July 2019 15:38  
**To:** [REDACTED]  
**Subject:** FW: land registry searches please

Hi [REDACTED]  
The four title number Registers are attached.  
Kind regards

[REDACTED]  
Legal Secretary | Property & Planning Law | Legal | Transport for London  
Tel: [REDACTED] [@tfl.gov.uk](mailto:[REDACTED]@tfl.gov.uk)

---

**From:** [REDACTED]  
**Sent:** 01 July 2019 14:49  
**To:** [REDACTED] (Legal Support)  
**Subject:** land registry searches please

[Attachments available from Land Registry]

*EGL527333 – register*  
*AGL248047 – register*  
*EGL512363 – register*  
*LN104921 – register*

[REDACTED] | Principal Lawyer - Property & Planning | Legal  
Transport for London | 3rd Floor, Petty France | 55 Broadway, London | SW1H 0BD  
[REDACTED] [tfl.gov.uk](http://tfl.gov.uk) | Tel: [REDACTED]

Legal 500 2018 in-house transport team of the year

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 01 July 2019 16:56  
**To:** 'Julian Shirley'  
**Subject:** BGY Public Land note  
**Attachments:** Bishopsgates Goods Yard Affordable Housing Threshold July 2019.pdf

Hello Julian

Further to our conversation and the meeting last week, please find a copy of the GLA note on the Public Land matter as requested.

If you have any queries please let me know.

Regards

[REDACTED]  
**Planning Officer** - Bishopsgate Goodsyrd Development, Enterprise & Environment | **Planning**  
GREATERLONDONAUTHORITY  
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# **Bishopgate Goodsyrd Affordable Housing Threshold**

## **Greater London Authority**

**1<sup>st</sup> July 2019**

### **Introduction**

- 1.1 This planning note considers the approach to affordable housing in respect of the mixed use redevelopment proposals at Bishopsgate Goods Yard (BGY) and specifically whether the site is considered to be public land for the purposes of determining the relevant affordable housing threshold under the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance (SPG) and the Draft London Plan.

### **Policy and Guidance**

- 2.1 There is a clearly established need for affordable housing in London. The lack of supply of homes that Londoners can afford has played a significant role in London's housing crisis. The 2017 London Strategic Housing Market Assessment ("the SMHA") identified a significant need for housing, and for affordable housing in particular.
- 2.2 The failure to provide sufficient numbers of new homes to meet London's needs has given rise to a range of negative social, economic and environmental consequences, including: worsening housing affordability issues, overcrowding, reduced labour market mobility, staff retention issues and longer commuting patterns. The SMHA also identified that London's rates of need are far greater than in the rest of the country with significantly higher levels of overcrowding and homelessness in London. Delivering more affordable housing is a key strategic issue for London, as set out in the London Plan and the Draft London Plan.
- 2.3 London Plan Policy 3.9 promotes the creation of mixed and balanced communities by tenure and household income across London with developments that foster social diversity, redress social exclusion and strengthening neighbourhood identity. Policy 3.10 defines affordable housing as social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Policy 3.11 seeks to maximise affordable housing provision and ensure an average of at least 17,000 more affordable homes per year in London over the term of the plan, with 60 per cent of provision being for social and affordable rent and 40 per cent being for intermediate rent or sale.
- 2.4 Policy 3.12 requires the maximum reasonable amount of affordable housing to be sought on individual private residential and mixed use schemes having regard to various factors including: current and future affordable housing requirements at levels identified in line with Policies 3.8, 3.10 and 3.11; London Borough affordable housing targets; the need to encourage rather than restrain residential development; the specific circumstances of individual developments; resources available to fund affordable housing, development viability; the implications of phased development including provisions for re-appraising viability prior to implementation and other scheme requirements, and that affordable housing should normally be provided on-site.
- 2.5 Draft London Plan Policy H5 sets out a strategic target for 50 per cent of all new homes delivered across London to be affordable. A specific measure to achieve this is public sector land delivering at least 50 per cent affordable housing on each site. Paragraph 4.5.4B states that public sector land represents an opportunity to deliver homes that can meet the needs of London's essential workers who maintain the function and resilience of the city. The Mayor expects that residential proposals on public land should deliver at least 50 per cent affordable housing on each site<sup>1</sup>.

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<sup>1</sup> Minor Suggested Changes version July 2018.

- 2.6 Under the Affordable Housing and Viability Supplementary Planning Guidance (SPG) 2017 and Policy H6 of the draft London Plan, schemes providing 35 per cent affordable housing on private land and 50 per cent on public and industrial land are able to progress through the Fast Track Route. Where schemes do not provide the relevant affordable housing threshold, a financial viability assessment is required to ascertain the maximum level of affordable housing deliverable on the scheme. Schemes considered under the Viability Tested Route are subject to late viability reviews.
- 2.7 Paragraph 2.36 of the SPG and Paragraph 4.6.5 of the Draft London Plan define public land as: *“Land that is owned or in use by a public sector organisation, or company or organisation in public ownership or land that had been released from public ownership and on which housing development is proposed”*. Further details on the application of the threshold approach on public land are set out in a GLA Practice Note published in July 2018<sup>2</sup>.
- 2.8 Policy H7 requires that a minimum of 30 per cent of affordable housing is provided as low cost rent and a minimum of 30 per cent as intermediate housing, with the remaining 40 per cent to be determined by the borough based on identified housing need through the Development Plan process or guidance. Where affordable homes are provided above 35 per cent, their tenure is flexible, provided the homes are genuinely affordable.

### **Land at Bishopsgate Goodsyard**

- 3.1 The majority of the site is owned by Network Rail Infrastructure Limited. Network Rail is a government owned arms length public sector company of the Department of Transport.
- 3.2 Part of the site known as the Boxpark Retail Mall was acquired by the applicant Bishopsgate Goodsyard Regeneration Limited (BGYRL) in January 2012. The sum paid was £2m plus VAT. The Boxpark is a temporary use with consents expiring on 31<sup>st</sup> May 2021 (LBH) and 1<sup>st</sup> June 2021 (LBTH). The Boxpark will be replaced by the proposed development which is the subject of the current planning application.

### **Applicant Approach to Affordable Housing Threshold**

- 4.1 The applicant intends to submit revised development proposals. The applicant set out the intention of providing 50 per cent affordable housing, however has subsequently revised this to 35 per cent affordable housing following further proposed amendments involving a higher number of residential units and commercial floorspace.
- 4.2 The applicant considers that the site should be considered under the Fast Track Route whilst providing 35 per cent affordable housing. A note has been prepared by Dp9 Limited, with input from Herbert Smith Freehills, which puts forward the case that the site should not be considered as public land for the purposes of determining the affordable housing threshold. An Opinion has also been provided by BGYRL from Russell Harris QC which refers to the Dp9 note.
- 4.3 The Dp9 note provides a timeline for land acquisition at BGY and refers to a Conditional Agreement for the sale of the site. It states that the applicant was assigned the right to acquire leasehold and freehold interests in the site and airspace over the East London Line in 2002 from Railtrack which was a private entity. Railtrack Plc changed to Network Rail Infrastructure Limited who are a government owned arms length public sector company in 2003 after BGYRL obtained the right to acquire the site. The Conditional Agreement for the sale of freehold and leasehold land at the site was varied in 2006 and again in 2011.

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<sup>2</sup> The Practice Note is non-statutory guidance which sets out further details on implementation of the affordable housing threshold for public land, establishing principles for how specific circumstances should be approached.

- 4.4 The GLA requested to be provided with a copy of the Conditional Agreement at a meeting with BGYRL and Dp9 on 7<sup>th</sup> March 2019. The Agreement has however not been forthcoming. A letter from Network Rail to BGYRL dated 9<sup>th</sup> April 2019 was given to the GLA which states that the chronology and summary of the land ownership position at Paragraph 4 of the Dp9 note is accurate and comprehensive. However, the note is concise in this respect, and without the opportunity to consider the Conditional Agreement and subsequent variations, the GLA has not been able to fully understand the nature of acquisition and disposal arrangements at the site.
- 4.5 The Dp9 note and Opinion refer to paragraphs 13-15 of the GLA Practice Note on Affordable Housing on Public Land which distinguish between scenarios where a public sector land interest is in the form of a freehold and leasehold interest. Paragraph 14 states that where the public sector land interest is a freehold or similar interest and a long leasehold is in place which is not held by the public land owner, the 35 per cent threshold would apply.
- 4.6 Paragraph 13 of the Practice Note is relied on, which states that where a private landowner holds a long leasehold interest, control of the land is primarily in private hands. While BGYRL do not hold a freehold or leasehold interest in the site (with the exception of the Box Park) the case is made that because BGYRL have the right to acquire interests in the site and draw down land for the purposes of redevelopment, this is similar to holding a long leasehold interest as the applicant has control of the potential development of the site. Great reliance is placed on the details of the Conditional Agreement by the applicant and there is considerable focus on the terms and nature of the Agreement. In order to be able to consider the case put forward by BGYRL the GLA must be provided with a copy of the Conditional Agreement.
- 4.7 The note and Opinion also refer to paragraph 10 of the Practice Note which states that where sites were disposed of and either have been redeveloped or subject to a change of use prior to publication of the SPG, the 35 percent threshold should apply. The point advanced by Dp9 is that the site has been redeveloped and subject to a change of use prior to the SPG being published. The GLA assume that this is a reference to the temporary Boxpark, which comprises approximately 5 per cent of the site. The Opinion however rejects the approach that the previous redevelopment of a site should be relevant to determining the threshold, arguing that the key issue is whether the site has transacted prior to the introduction of the SPG and that a Conditional Agreement regarding a future purchase of a site should have the same effect.

### **Status of land ownership and redevelopment of site**

- 5.1 The GLA has considered the information provided by the applicants. The following points are relevant to determining the appropriate affordable housing threshold to be applied:
- The site is currently in the ownership of Network Rail. This is a company in public ownership.
  - BGYRL have not purchased the site. They do not hold a leasehold or freehold interest in the site. BGYRL do not have occupation or use of the site (except for the boxpark).
  - Paragraph 14 of the GLA Practice Note, which states that the 35 per cent threshold should apply where a long leasehold is in place which is not held by the public land owner, does not apply in this case. While BGYRL secured the right to acquire parcels of the land for development and Network Rail have a 'put option' to require BGYRL to take a transfer of the land, the criteria at Paragraph 14 for applying the 35 per cent threshold, that a long leasehold is held, is not met in this case. Network Rail retain ownership of and occupation of the site.
  - A Conditional Agreement was entered into for the future purchase of the site with Railtrack, however the site was not purchased from Railtrack and has not been bought from

Network Rail. Ownership and use of the site remains with Network Rail, a company in public ownership.

- BGY is a site that is surplus to public sector requirements and remains undeveloped. The redevelopment of the site for a large scale mixed use scheme has been proposed for a number of years with planning applications submitted to the London Boroughs of Tower Hamlets and Hackney in 2014. The applicant intends to make significant changes to the proposals. The applications have not been determined and the site has not been redeveloped. The part of the site that has been acquired by BGYRL for the Boxbark relates to a small proportion of the site and will be overtaken by the development. Paragraph 10 of the GLA Practice Note relating to disposal of and redevelopment or change of use prior to the SPG is not engaged.

- 5.2 Taking account of the land ownership and redevelopment status of the site, together with the information provided by the applicant regarding the Conditional Agreement for the purchase of the site, BGY falls within the definition of public land set out in the SPG and Draft London Plan.

### **Conclusion**

- 6.1 Having considered the information and advice provided by the applicants, and the matters referred to above, the site falls within the definition of public land within the SPG and Draft London Plan. It is owned by and operated by a public sector organisation. It is surplus to their requirements and has not been sold to the applicant or been redeveloped. The applicant has a Conditional Agreement to acquire the site but has no freehold or leasehold interest, with the exception of a small part of the site in temporary use. The applicant has not purchased or occupied the site. The criteria to be considered under the 35 per cent threshold set out in the SPG, Draft London Plan and Practice Note have not been met. The public land threshold for following the Fast Track Route applies in the circumstances of this site.

# Meeting Briefing

**To:** Jules Pipe, Deputy Mayor for Planning, Regeneration and Skills  
**From:** [REDACTED], Planning Officer, Bishopsgate Goods Yard

**Bishopsgate Goods Yard meeting with applicant, 15/04/19, 11.00 am,  
City Hall, Committee room 2**

## **GLA attendees:**

**Juliemma McLoughlin, Chief Planner ext [REDACTED]**

**Alison Flight, Deputy Head of Development Management, ext [REDACTED]**

**[REDACTED] Planning Officer, ext [REDACTED]**

## **Other attendees:**

**Peter Cole, Executive Director & Chief Investment Officer, Hammerson**

**John Mulryan – Group Managing Director, Ballymore Group**

**[REDACTED] Senior Development Manager, Ballymore Group**

**[REDACTED] – Development Manager, Hammerson**

**Jim Pool – Board Director, DP9**

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## **Overview:**

The joint venture partners (Hammerson & Ballymore) of the Bishopsgate Goods Yard development site have requested another meeting to update the Deputy Mayor on the progress of their emerging proposals ahead of the anticipated amended submission to the Mayor of their planning application within the next month. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

## **Objective of the meeting:**

The applicant is seeking to present their proposals ahead of formal submission

## **Agenda:**

- I [REDACTED]
- I [REDACTED]

- Discussion on status of land

[REDACTED]

[REDACTED]

[REDACTED]

### **Key points:**

#### **Public Land**

In September 2018 when the emerging scheme was proposing in the order of 190 units, the applicant was committed to providing 50% affordable in accordance with the threshold level for Public Land. Recently however, the applicant has amended their approach and is now proposing to provide 35% affordable following the Fast Track Route on the basis that the site is, in their opinion, not Public Land.

Their argument centres on the notion of 'control' of the land in question. Bishopsgate Goodsyrd Regeneration Limited (BGYRL) do not hold a freehold or leasehold interest in the site but secured the right to acquire such interests in 2002 from Railtrack, which was a private entity. Railtrack Plc changed to Network Rail Infrastructure Ltd, a government owned arms length public sector company in 2003. Hence, although BGYRL do not hold a freehold or leasehold interest they do have the right to acquire them and draw down land for the purposes of redevelopment. As such, their case is that BGYRL controls the potential development of the site and as such should be subject to the 35% FTR.

GLA Officers dispute this, given that although there is a long-standing contract agreement in place between the applicant and Network Rail, ownership over most of the site and operational control rests with the latter. The GLA's Practice Note on Public Land states that where a public sector land owner holds a freehold interest in a site but a long leasehold is held by a private body then the 35% AH threshold would apply. However, that is not the case in this instance with the exception of a small portion of the site (the Box Park). The majority of the site is therefore considered to meet the definition for public land in the Draft London Plan and the Mayor's Affordable Housing Supplementary Planning Guidance SPG. The affordable housing threshold for qualifying for the Fast Track Route would therefore be 50 per cent.

The applicant has indicated that they will be providing a legal opinion by leading counsel in support of their position. Officers will consider this on receipt and take legal advice as required.

[Remainder of briefing note out of scope of the request]